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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/224,980	01/04/1999	ANTHONY R. WALDROP	2003-1	3080

25280 7590 07/16/2003

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EXAMINER

BEFUMO, JENNA LEIGH

ART UNIT PAPER NUMBER

1771

DATE MAILED: 07/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/224,980

Applicant(s)

WALDROP ET AL.

Examiner

Jenna-Leigh Befumo

Art Unit

1771

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 June 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: \_\_\_\_\_

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

Continuation of 3. Applicant's reply has overcome the following rejection(s): The 103 rejections based on McLarty, III (5,855,991) are withdrawn since the reference qualifies as a 102(e) reference and the Applicant has established the reference is commonly assigned with this Application and therefore, it can not be used in a 103 rejection.

Continuation of 5. does NOT place the application in condition for allowance because: The Applicant's arguments with respect to the other rejections are not persuasive. It is felt that Gretzinger provides sufficient teachings to add UV stabilizers to elastomeric filaments and to add elastomeric material to the warp yarns. The Applicant argues that Gretzinger's teaching of adding minor amounts of elastomeric material would require undue experimentation. However, one of ordinary skill in the art would not only understand that this statement discloses blending elastomeric material with the non-elastomeric material, but also be able to optimize the "minor amount" of elastomeric material so that the fabric is more comfortable due to the elastic quality of the warp yarns while still being resilient enough so that the fabric provides sufficient support to the user. Further, the Applicant has not provided any evidence that this teaching would indeed require undue experimentation. What experimentation would be necessary and how would the experimentation be undue? Finally, if the suggestion that adding a "minor amount" of elastomeric material would require undue experimentation, then wouldn't that imply that the amount of elastomeric material present in the warp yarns is critical and should be claimed by the Applicant? The Applicant also argues Stumpf et al. is not sufficient to teach using textured yarns because Stumpf et al. has them running in the fill direction. However, the Applicant never claims which direction the texturized yarns need to be in and Stumpf et al. teaches that the texturized yarns are run perpendicular to the elastomeric monofilaments. Thus, the relationship between the elastomeric monofilament yarns and the texturized yarns would be maintained if the yarns are perpendicular to each other. Therefore, the rejections are maintained.



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PRIMARY EXAMINER